# ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
7 May 2002 *

In Case T-306/01 R,

**Abdirisak Aden**, residing in Spånga (Sweden),
**Abdulaziz Ali**, residing in Järfälla (Sweden),
**Ahmed Yusuf**, residing in Spånga,
**Al Barakaat International Foundation**, established in Spånga,
represented by L. Silbersky and T. Olsson, lawyers,

applicants,

v

**Council of the European Union**, represented by M. Vitsentzatos and I. Rådestad, acting as Agents,

and

**Commission of the European Communities**, represented by A. Van Solinge and J. Enegren, acting as Agents, with an address for service in Luxembourg,

defendants,

* Language of the case: Swedish.

APPLICATION for the suspension of operation of Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 (OJ 2001 L 67, p. 1) and of Commission Regulation (EC) No 2199/2001 of 12 November 2001 amending, for the fourth time, Regulation No 467/2001 (OJ 2001 L 295, p. 16) in so far as they refer to the applicants, until judgment is given in the main proceedings,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

## Order

### Law

1 Under Article 25 of the United Nations Charter, signed in San Francisco (United States of America) on 26 June 1945, '[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.

2 Article 103 of the United Nations Charter provides that '[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail'.

3 Article 301 EC reads as follows:

'Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.'

4 Article 60(1) EC provides:

'If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.'

5 The first paragraph of Article 302 EC states:

'It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.'

6 Lastly, Article 202 EC provides:

'To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:

...

— confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down...'

## Facts and circumstances of the case

7 On 15 October 1999 the United Nations Security Council ('the Security Council') adopted Resolution 1267 (1999). In paragraph 2 of that resolution the Security Council demanded that the Taliban turn over Usama bin Laden without further delay to appropriate authorities. In order to ensure compliance with that obligation, paragraph 4 of Resolution 1267 (1999) provides that all States must, in particular, '[f]reeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made

available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorised by the Committee on a case-by-case basis on the grounds of humanitarian need'.

8 In paragraph 6 of Resolution 1267 (1999) the Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a committee of the Security Council composed of all its members ('the Taliban Sanctions Committee'), responsible in particular for ensuring that States implement the measures imposed by paragraph 4, designating the funds or other financial resources referred to in paragraph 4 and considering requests for exemptions from the measures imposed by paragraph 4.

9 Since the Council considered that action by the Community was needed in order to implement that resolution, on 15 November 1999 it adopted Common Position 1999/727/CFSP concerning restrictive measures against the Taliban (OJ 1999 L 294, p. 1). Article 2 of that common position requires the freezing of funds and other financial resources held abroad by the Taliban under the conditions set out in Security Council Resolution 1267 (1999).

10 On 14 February 2000 the Council adopted, on the basis of Articles 60 EC and 301 EC, Regulation (EC) No 337/2000 concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2000 L 43, p. 1).

11 On 19 December 2000 the Security Council adopted Resolution 1333 (2000), demanding, in particular, that the Taliban comply with Resolution 1267 (1999). It decided in particular to strengthen the ban on flights and the freeze on funds imposed by Resolution 1267 (1999).

12 In paragraph 8(c) of Resolution 1333 (2000), the Security Council instructed the Taliban Sanctions Committee to maintain an updated list, based on information provided by States and regional organisations, of the individuals and entities designated as being associated with Usama bin Laden, including those in the Al-Qaida organisation.

13 Under paragraph 22 of Resolution 1333 (2000), the measures imposed *inter alia* by paragraph 8 entered into force one month after the adoption of that resolution, that is to say, on 19 January 2001.

14 In paragraph 23 of Resolution 1333 (2000) the Security Council decided that the measures imposed inter alia by paragraph 8 would be established for 12 months and that, at the end of that period, it would decide whether to extend them for a further period with the same conditions.

15 Since the Council considered that action by the Community was needed in order to implement that resolution, on 26 February 2001 it adopted Common Position 2001/154/CFSP concerning additional restrictive measures against the Taliban and amending Common Position 96/764/CFSP (OJ 2001 L 57, p. 1). Article 4 of that common position provides:

'Funds and other financial assets of Usama bin Laden and individuals and entities associated with him as designated by the [Taliban] Sanctions Committee, will be frozen, and funds or other financial resources will not be made available to Usama bin Laden and individuals or entities associated with him as designated by the [Taliban] Sanctions Committee, under the conditions set out in [Resolution 1333 (2000)].'

16 On 6 March 2001 the Council adopted, on the basis of Articles 60 EC and 301 EC, Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation No 337/2000 (OJ 2001 L 67, p. 1).

17 The third recital in the preamble to that regulation states that the measures prescribed by Resolution 1333 (2000) 'fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned'.

18 Article 1 of Regulation No 467/2001 provides that for the purposes of the regulation:

— 'funds' means: financial assets and economic benefits of any kind, including, but not necessarily limited to, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing;

— 'freezing of funds' means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

19 Article 2 of Regulation No 467/2001 provides:

'1. All funds and other financial resources belonging to any natural or legal person, entity or body designated by the Taliban Sanctions Committee and listed in Annex I shall be frozen.

2. No funds or other financial resources shall be made available, directly or indirectly, to or for the benefit of persons, entities or bodies designated by the Taliban Sanctions Committee and listed in Annex I.

3. Paragraphs 1 and 2 shall not apply to funds and financial resources for which the Taliban Sanctions Committee has granted an exemption. Such exemptions shall be obtained through the competent authorities of the Member States listed in Annex II.'

20 Article 9(2) of Regulation No 467/2001 provides that '[e]xemptions granted by the Taliban Sanctions Committee shall apply throughout the Community'.

21 Annex I to Regulation No 467/2001 contains the list of persons, entities and bodies to which the freeze of funds imposed by Article 2 applies. Article 10(1) of Regulation No 467/2001 provides that the Commission is empowered to amend or supplement Annex I on the basis of determinations made by either the Security Council or the Taliban Sanctions Committee.

22 Annex II to Regulation No 467/2001 contains the list of competent national authorities for the purpose of applying inter alia Article 2(3). In the case of Sweden, the competent authority with regard to the freezing of funds is the 'Regeringskansliet, Utrikesdepartementet, Rättssekretariatet för EU-frågor'.

23 On 8 March 2001 the Taliban Sanctions Committee published its first consolidated list of entities and persons who had to be subject to the freeze of funds under Security Council Resolutions 1267 (1999) and 1333 (2000) (see Press Release AFG/131 SC/7028 of that committee of 8 March 2001). That list has been amended and supplemented on various occasions since then. The Commission has therefore adopted various regulations under Article 10 of Regulation No 467/2001 by which it has amended or supplemented Annex I to that regulation.

24 On 9 November 2001 the Taliban Sanctions Committee published a further addendum to its list of 8 March 2001 (see Press Release AFG/163 SC/7206 of that committee), including, in particular, the names of the following entity and three persons:

— 'Barakaat International Foundation, Box 4036, Spanga, Stockholm, Sweden; Rinkebytorget 1, 04 Spånga, Sweden';

— 'Aden, Abdirisak; Akaftingebacken 8, 163 67 Spånga, Sweden; DOB: 01 June 1968';

— 'Ali, Abdi Abdulaziz, Drabantvagen 21, 177 50 Spånga, Sweden; DOB: 01 January 1955';

— 'Ali, Yusaf Ahmed, Hallbybybacken 15, 70 Spånga, Sweden; DOB: 20 November 1974'.

25 By Commission Regulation (EC) No 2199/2001 of 12 November 2001 amending, for the fourth time, Regulation No 467/2001 (OJ 2001 L 295, p. 16), the names of the entity and the three natural persons in question were added, with others, to Annex I to that regulation.

26 On 16 January 2002 the Security Council adopted Resolution 1390 (2002), which provides in particular that the freeze of funds imposed by Article 8(c) of Resolution 1333 (2000) should continue.

## The applicants

27 Mr Aden, Mr Ali and Mr Yusuf, referred to in Regulation No 2199/2001 (in the case of Mr Yusuf's name, using a different method of transliteration), are Swedish citizens of Somali origin. It is stated that Mr Yusuf was employed by Al Barakaat International Foundation and that he and Mr Ali are administrators in that foundation.

28 Since information concerning the activities of Al Barakaat International Foundation has not been provided in the application for interim relief, it is necessary to refer to the details concerning that applicant as set out in the application in the main proceedings, from which it appears that it is a non-profit-making association governed by Swedish law, the object of which is to support people through activities of an educational, social and cultural nature and by providing assistance to refugees. In accordance with its statute, it has facilitated the transfer of funds between Sweden and Somalia through an arrangement which seeks to make up for deficiencies in the banking system. Thus, a person of Somali origin living in Sweden who wishes to transfer funds to relatives in Somalia deposits those funds with Al Barakaat International Foundation. The foundation then sends an e-mail to a person of trust in Somalia who is responsible for making payment to the recipients. Funds paid in Sweden are transferred through Swedish banking institutions to Al Barakaat Bank, established in the United Arab Emirates. Al Barakaat International Foundation charges a 5% commission on the sums transferred and in turn pays a 3.5% commission to Al Barakaat Bank.

## Procedure and forms of order sought

29 By application lodged at the Registry of the Court of First Instance on 10 December 2001, registered under number T-306/01, Mr Aden, Mr Ali, Mr Yusuf and Al Barakaat International Foundation brought an action against the Council and the Commission under Article 230 EC, in which they claim that the Court should:

— annul Regulation No 2199/2001;

— declare Regulation No 467/2001 inapplicable pursuant to Article 241 EC;

— make an order as to costs in an amount to be specified later.

30 The applicants also applied in that document for suspension of the operation of Regulation No 2199/2001.

31 By a separate document lodged at the Registry of the Court of First Instance on 10 December 2001, the applicants requested adjudication under an expedited procedure pursuant to Article 76a of the Rules of Procedure of the Court of First Instance. The defendants lodged written observations on that request on 7 January 2002. The request was dismissed by a decision of the First Chamber of the Court of First Instance on 22 January 2002. The letter from the Registry of the Court of 24 January 2002 informing the parties of that decision stated, first, that the pleas put forward in the action for annulment raised delicate legal points and, second, that the Court could not adjudicate on the application for interim relief because it had not been made in a separate document, in accordance with the Rules of Procedure. With regard to that last point, it was stated that it remained possible to lodge an application for interim relief in compliance with the provisions of those Rules.

32 By a document lodged at the Registry of the Court of First Instance on 8 March 2002, the applicants requested suspension of the operation of Regulations No 467/2001 and No 2199/2001, in so far as the regulations concerned them, until judgment was given in the main proceedings.

33 The Commission and the Council submitted their written observations on the application for interim relief on 15 March 2002.

34 At the request of the President of the Court of First Instance, the Kingdom of Sweden was asked, under the second paragraph of Article 21 of the EC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 thereof, to be represented at the hearing in order to answer any questions.

35 The parties presented oral argument on 22 March 2002. At the hearing the representative of the Kingdom of Sweden replied to the questions put by the President of the Court.

36 By a letter from the Registry of the Court of First Instance to the Kingdom of Sweden of 25 March 2002, the President of the Court asked several written questions pursuant to the second paragraph of Article 21 of the Statute of the Court of Justice. The Kingdom of Sweden lodged its answers with the Registry of the Court of First Instance on 3 April 2002.

37 The answers, which were sent to the parties to the dispute, were commented upon by the applicants in a document lodged on 15 April 2002. The Council and the Commission did not submit any observations.

## Law

38 Under Article 242 EC in conjunction with Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by

Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court may, if it considers that circumstances so require, suspend the operation of the contested measure.

39 Article 104(2) of the Rules of Procedure provides that applications for interim relief must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the relief applied for. Those conditions are cumulative, so that an application for such relief must be dismissed if one of them is not fulfilled (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, paragraph 30, and order of the President of the Court of First Instance in Case T-350/00 R *Free Trade Foods* v *Commission* [2001] ECR II-493, paragraph 32). The court hearing the application must also, where appropriate, weigh up the competing interests (order of the President of the Court of Justice in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraph 73).

40 In the context of that overall examination, the court dealing with the application must exercise the broad discretion enjoyed by it to determine the manner in which those various conditions are to be examined in the light of the specific circumstance of each case (order of the President of the Court of Justice in Case C-393/96 P(R) *Antonissen* v *Council and Commission* [1997] ECR I-441, paragraph 28).

41 The relief sought must additionally be provisional inasmuch as it must not prejudge the points of law or fact in issue or invalidate in advance the effects of the decision subsequently to be given in the main action (order of the President of the Court of Justice in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 22).

42 In the present case it is necessary to consider, first of all, to what extent the application for interim relief is admissible.

1. *The admissibility of the application for interim relief*

*The subject-matter of the application for interim relief*

43 Since failure to comply with the Rules of Procedure constitutes an absolute bar to proceedings, it is necessary for the Court to consider of its own motion whether the relevant provisions of those Rules have been complied with.

44 As Article 104(1) of the Rules of Procedure makes clear, there must be a close link between the interim relief sought and the subject-matter of the main proceedings. According to the first subparagraph of that provision, an application under Article 242 EC to suspend the operation of a measure adopted by an institution 'shall be admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance'.

45 Moreover, the purpose of proceedings for interim relief is to safeguard the full effectiveness of the definitive future decision, in order to ensure that there is no lacuna in the legal protection provided by the Community judicature (see, to that effect, orders of the President of the Court of Justice in Case C-399/95 R *Germany* v *Commission* [1996] ECR I-2441, paragraph 46, and in *Antonissen* v *Council and Commission*, cited above, paragraph 36).

46 Here, the main action is an application for the annulment of Regulation No 2199/2001. First, inasmuch as the application for interim relief is intended to obtain suspension of the effects of Regulation No 467/2001 it exceeds the subject-matter of the main proceedings and, second, suspension of the effects of Regulation No 2199/2001 would in itself ensure the full effectiveness of the future decision of the Court on the substance of the case.

47 The head of claim seeking suspension of the operation of Regulation No 467/2001 must therefore be rejected as inadmissible.

*Compliance with the formal conditions concerning the documents lodged by the parties*

48 It should be noted first of all that the applicants in their application and also the Council and the Commission in their observations make references in a general manner to their pleadings in the main proceedings.

49 For the reason already given in paragraph 43 above, it is necessary for the Court to consider of its own motion whether the parties to the proceedings for interim relief have complied with the relevant provisions of the Rules of Procedure.

50 Article 104(2) of the Rules of Procedure provides that applications for interim measures must state 'the pleas of fact and law establishing a prima facie case for the interim measures applied for'.

51 Article 104(3) states that the application for interim relief is to be made 'by a separate document and in accordance with the provisions of Articles 43 and 44'.

52 It follows, on reading those provisions of Article 104 of the Rules of Procedure together, that an application for interim relief must be sufficient in itself to enable the defendant to prepare his observations and the judge hearing the application to rule on it, where necessary, without other supporting information. In order to ensure legal certainty and the proper administration of justice, it is necessary, if such an application is to be admissible, that the essential elements of fact and law on which it is founded be set out in a coherent and comprehensible fashion in the application for interim relief itself. While the application may be supported and supplemented on specific points by references to particular passages in documents which are annexed to it, a general reference to other written documentation, even if it is annexed to the application for interim relief, cannot make up for the absence of essential elements in that application.

53 A similar interpretation must be adopted regarding the presentation of observations on an application for interim relief which are lodged by a defendant.

54 As the President of the Court ruled in the order in Case T-236/00 R *Stauner and Others* v *Parliament and Commission* [2001] ECR II-15, where some of the grounds contained in the application for interim relief and in the observations submitted in response are not set out in a manner consistent with the requirements of the abovementioned provisions of the Rules of Procedure, those grounds cannot be taken into consideration in order to establish the points of fact and law to which they relate.

55 In the present case, without prejudice to what was said at the hearing before the President of the Court, a decision will be made taking account solely of the arguments put forward by the parties in the pleadings which they have lodged in the proceedings for interim relief.

*The interest in obtaining the interim relief sought*

56 In their written and oral observations, the defendant institutions have maintained that an order suspending the operation of the contested regulations would have no practical effect at all since it would in no way prevent the alleged damage from occurring. The Kingdom of Sweden is required to freeze the applicants' assets under its obligation to comply with international law.

57 It is settled case-law that when deciding whether to grant interim relief it is necessary to ascertain whether the applicant has an interest in obtaining the relief sought (see, in particular, the order of the President of the Court of First Instance in Case T-164/96 R *Moccia Irme* v *Commission* [1996] ECR II-2261, paragraph 26).

58 In the present case, the effect of suspension of the operation of Regulation No 2199/2001 would be to enable the applicants once more to move, transfer, alter, use or deal with funds and would therefore have practical effect.

59 As the Kingdom of Sweden confirmed at the hearing in answer to a question from the President of the Court, no legal rules have been enacted in that Member State to give effect to the Security Council resolutions. Therefore, as Swedish law currently stands, there is no national rule that would prevent the suspension of operation from having practical effect.

60 In addition, the objection of the defendant institutions, based on the premiss that the Kingdom of Sweden, as a member of the United Nations, is bound to accept and carry out Security Council decisions in accordance with Article 25 of the

United Nations Charter, if necessary even if Regulation No 2199/2001 is not effective, clearly conflicts here with their assertion that the Community has exclusive competence to implement the sanctions at issue in this case on the basis of Articles 60 EC and 301 EC. The assertion of such exclusive competence, which has moreover been exercised, necessarily also means that Member States no longer have competence to implement the sanctions once they have been implemented by the Community.

2. *The substance of the application for interim relief*

*Arguments of the parties*

Prima facie case

61 The applicants refer in essence to the pleas which they have put forward in the main proceedings. None the less, they expressly put forward some arguments, separated into two complaints.

62 First, they consider that in adopting Regulations No 467/2001 and No 2199/2001 ('the contested regulations') the defendant institutions infringed the applicants' fundamental rights, in particular the right to a fair hearing. Sanctions were imposed on them although they had not first been heard or given the opportunity to defend themselves, nor had the measures imposing the sanctions been subjected to any judicial review. To proceed by laying down a rule through the drawing up of a list is also in breach of the principles of legality and legal certainty.

63 The sole ground for putting the applicants on the list in Annex I to Regulation No 467/2001 was the inclusion of their names in the list drawn up by the Taliban Sanctions Committee, which had taken its decision on the basis only of information which it had received. Neither the Council nor the Commission examined the grounds on which the committee had put the applicants on that list. It has never been claimed that the applicants infringed any law; nor was there any consideration of whether there had been any breach of the law before the sanctions were implemented.

64 Consequently, the only possible judicial review is limited to ascertaining whether the names listed in Regulation No 2199/2001 correspond with those given by the Taliban Sanctions Committee, and whether the applicants are indeed the people named. Moreover, the Taliban Sanctions Committee does not conduct such a review since it is not a 'legal body' but a 'political body'. In that connection, the applicants submitted at the hearing that a unanimous decision of that committee was required in order to remove from the list, drawn up by the committee itself, the name of a person appearing on it.

65 Second, the applicants claim that Article 301 EC enables the Council to take measures only in respect of non-member countries and not, as it did in this case, in respect of nationals of a Member State residing in that Member State. The situation in this case is different from all other cases of sanctions previously adopted by the Council by means of regulations.

66 The Council and the Commission consider that the pleas put forward by the applicants do not establish a prima facie case justifying grant of the interim relief applied for. Both institutions refer to the relevant passages in their defences annexed to their observations.

67 In its observations the Council none the less points out that it has not been proved in the slightest that the interim relief sought would not prejudge the points of law or fact in dispute or invalidate in advance the effects of the decision to be given subsequently in the main action. Such proof is all the more necessary because the relief sought would in fact prejudge the points of law, in particular as regards the infringement of fundamental rights, and risk invalidating the effects of the decision to be given subsequently in the main action, in particular with regard to whether the assets are in fact frozen.

68 Moreover, the Council and the Commission rely on the rejection of the request for proceedings to be expedited (see paragraph 31 above). The Council and the Commission recall that, in the letter from the Registry of 24 January 2002, the Court of First Instance acknowledged that the main proceedings raised legal issues of a complex and sensitive nature and infer from this that the resolution of those issues warrants in-depth examination and that they cannot therefore be decided in proceedings for interim relief.

69 Lastly, the Commission disputes that previous sanctions of the type at issue in the present case have been targeted solely at non-member States or leaders having a direct and decisive influence in a non-member country. It refers to the case involving Yugoslavia, in which the group targeted by the sanctions was made up to a large extent of natural and legal persons connected with the ruling class, although they did not formally belong to it.

70 At the hearing, the institutions did not deny the applicants' claim that they did not check whether the names on the list drawn up by the Taliban Sanctions Committee had been included justifiably, stating in that regard that they are under a mandatory duty.

Urgency

71 The applicants consider that the condition as regards urgency is met.

72 First, they are suffering economic loss since their financial resources are frozen under Article 2 of Regulation No 467/2001 and it is not possible for them to have any financial resources in the future. The contested regulations also make it impossible in principle for them to be taken on by an employer or to engage in any occupation. One of the applicants, Mr Yusuf, has been dismissed.

73 In addition, they are suffering non-material harm. The effect of the sanctions is to exclude them entirely from normal life in society, since any standard financial transaction involves a risk that the assets will be frozen by the financial institutions.

74 The sanctions imposed by the contested regulations stigmatise them and relegate them to the margins of society, since it is alleged that they are involved in terrorist activity. Death threats were made against Mr Yusuf after the assets of Al Barakaat International Foundation were frozen. Complaints have also been made against the applicants' representatives by xenophobic organisations.

75 In addition, Mr Aden, Mr Ali and Mr Yusuf have encountered difficulties in asserting their rights before the national courts. A proposed legal action against the banks could not be brought because insurance companies refused to provide

legal protection in two instances. The insurers stated they could not become involved because of the sanctions.

76 Harm is also being suffered due to infringement of fundamental rights and freedoms. Effective judicial review of the sanctions is impossible because the very basis for the sanctions cannot be checked by the courts. Similarly, it is impossible to review the evidence and investigations on which the sanctions were based since the former are not conceived as the legal consequence of a specific accusation.

77 Infringement of the rights and fundamental freedoms of the applicants is continuing and cannot be compensated for retrospectively.

78 The Council and the Commission point out, first, that the application for interim relief was made four months after the applicants' assets were frozen, three months after the application for annulment was lodged and more than 45 days after the Court expressly indicated to them the procedure to follow in order to make an application for interim relief (see paragraph 31 above). Those circumstances must be taken into consideration by the President of the Court for the purpose of denying that there is any urgency for a decision (order of the President of the Second Chamber of the Court of Justice in Case 61/76 R II *Geist* v *Commission* [1976] ECR 2075).

79 Second, as regards damage, the Council and the Commission consider first of all that the alleged economic damage is neither serious nor irreparable. It is settled case-law that damage of a financial nature is, in principle, not considered to be serious and irreparable unless, in the event of the applicant's being successful in the main action, it could not be wholly recouped (orders of the President of the

Court of Justice in Case C-257/90 R *Italsolar* v *Commission* [1990] ECR I-3841, paragraph 15, and in Case C-358/90 R *Compagnia italiana alcool* v *Commission* [1990] ECR I-4887, paragraph 26). The Council states that all the applicants' property would be returned if the measures to which it is subject were lifted. The aggravation of the financial burdens, such as non-payment of interest, cannot be regarded as irreparable damage, since financial compensation can restore the injured party to the situation which existed before the damage was incurred.

80 As regards the non-material damage, the Commission submits that that is the consequence of the inclusion of the applicants on the list drawn up by the Taliban Sanctions Committee. Accordingly, even if the Court were to find for the applicants, the sanctions decided upon by the Security Council and the list would remain.

81 As for damage related to infringement of fundamental rights, the Commission simply submits that there has been no such infringement. The Council considers, first, that the freeze on assets is not such as to cause non-material damage, second, referring to paragraphs 25 to 36 of the defence annexed to its observations, that the alleged infringement has not been established and, third, that the non-material damage in question is not the result of the contested regulations but of the inclusion of the applicants in the list drawn up by the Taliban Sanctions Committee, so that suspension would not in any way prevent it from occurring.

82 In any event, in the Council's submission, so long as the Security Council resolutions and the implementing decisions of the Taliban Sanctions Committee remain in force, there is an obligation under international law to freeze the applicants' assets. No urgency can therefore be established since the applicants have been the subject of the same measures as those provided for in the contested regulations.

Balancing of interests

83 The applicants consider that granting the suspension of operation sought so far as they are concerned would have no harmful effect on general or individual interests.

84 Referring to the preamble to Regulation No 467/2001, which makes reference to Council Common Position 2001/154/CFSP and to Security Council Resolutions 1267 (1999) and 1333 (2000), the applicants submit that the objective pursued in adopting the measures is that of 'avoiding distortion of competition' within the Community. The pursuit of such an objective cannot take precedence over compliance with the general principle of legal certainty or with fundamental rights.

85 Moreover, the applicants state that they cannot see, in the absence of an adequate statement of reasons, how the lifting of the sanctions imposed on them could have an impact on the objective of influencing Afghanistan, the Taliban, Usama bin Laden or Al-Qaida.

86 The Council and the Commission consider, however, that the public interest, so far as concerns both the struggle against terrorism and the Community's international credibility, prevails over the individual interests of the applicants.

87 As regards the interest in safeguarding the credibility of the European Community as a player on the international stage, the Council states that the Community must respect international law either in its own capacity or as the de

facto successor to the obligations of the Member States under Article 25 of the United Nations Charter (Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraph 9). Binding decisions of the Security Council acting under Chapter VII of the United Nations Charter in order to maintain peace and international security are an integral part of that law. Both the Council and the Commission consider that the credibility of the Community would be called in question if any person on whom sanctions are imposed could obtain suspension of universal measures at national or regional level without prior consultation with the Security Council, or indeed its agreement.

*Findings of the President of the Court*

88 In the present case it is appropriate to start by assessing the urgency of the application for interim relief.

89 It is well established that the urgency of an application for the adoption of interim measures must be assessed in the light of the extent to which an interlocutory order is necessary in order to avoid serious and irreparable damage to the party seeking the adoption of the interim measure (see, for example, the order of the President of the Court of Justice in Case C-329/99 P(R) *Pfizer Animal Health* v *Council* [1999] ECR I-8343, paragraph 94). It is for that party to prove that he cannot wait for the outcome of the main proceedings without suffering damage of that nature (see, in particular, the order of the President of the Court of First Instance in Case T-73/98 R *Prayon-Rupel* v *Commission* [1998] ECR II-2769, paragraph 36).

90 Contrary to what the Council and the Commission contend, it cannot be inferred from the mere fact that the application for interim relief was lodged more than three months after the action for annulment was brought that there is no urgency

as regards ordering the interim relief sought. It is clear from what was said at the hearing, and this was not disputed by the defendant institutions, that the period of three months was used by the applicants to try to obtain the lifting of the sanctions imposed on them, in particular by making informal contact with representatives of the Taliban Sanctions Committee and representatives of the United States authorities which had provided the information that led to the inclusion of the applicants on the list drawn up by the committee. Despite the fact that, following the application for an exemption submitted by the applicants, the majority of the members of the Taliban Sanctions Committee were in favour of lifting the sanctions against them, they were kept on the list as a result of opposition on the part of three States. The applicants cannot, therefore, be accused of a lack of diligence which has contributed to the materialisation of the alleged damage. On the contrary, it was because they realised that it was impossible to obtain the lifting of the sanctions imposed on them by any means other than submitting an application for interim relief to the Community judicature that the application was lodged.

(a) Damage alleged by Mr Yusuf, Mr Aden and Mr Ali

91 The damage alleged by the first three applicants, Mr Yusuf, Mr Aden and Mr Ali, essentially has two aspects. It is both financial and non-material.

Pecuniary damage

92 As regards the pecuniary damage alleged by the applicants, it is well established in the case-law (order of the President of the Third Chamber of the Court of Justice in Case 141/84 R *De Compte* v *Parliament* [1984] ECR 2575, paragraph 4; orders of the President of the Court of First Instance in Case T-497/93 R II

*Hogan* v *Court of Justice* [1993] ECR II-1005, paragraph 17, and in Case T-549/93 R *D.* v *Commission* [1993] ECR II-1347, paragraph 45) that purely financial damage cannot, in principle, be regarded as irreparable, or even as reparable only with difficulty, because financial compensation can be paid for it subsequently.

93 Nevertheless, the judge hearing an application for interim relief must determine in the light of the circumstances of the individual case whether immediate implementation of the measure which is the subject of the application for suspension of operation may cause the applicant serious and immediate harm which no subsequent decision could repair.

94 In the present case, the President of the Court must satisfy himself, having regard to the individual circumstances of each applicant, that they have an amount of money which under normal circumstances should enable them to meet all the expenditure necessary for satisfying their own basic needs and those of their families until judgment is given on the substance of the action.

95 The entry into force of Regulation No 2199/2001 had the immediate effect, as is apparent from the documents on the file, of freezing the applicants' assets, so that since the regulation was adopted they have been unable to carry out any financial transactions.

96 The applicants stated at the hearing that the Swedish authorities were no longer giving them any financial resources. After the representative of the Kingdom of Sweden refuted that statement, written questions were submitted to that State in order to clarify the individual situations of the applicants.

97 In the answers which it lodged on 3 April 2002, the Swedish Government described the benefits which Mr Yusuf, Mr Aden and Mr Ali are entitled to receive and gave details of the benefits which the Swedish authorities had actually paid to them.

98 It is to be noted that the applicants stated in their observations dated 15 April 2002 that breach of the sanctions imposed by the contested regulations is a criminal offence under Swedish law and that the possibility of receiving any form of benefit depends entirely on the way in which the legal provisions in question are interpreted and applied. According to the applicants, this means that it is uncertain whether the payments made to the applicants by the Swedish authorities are lawful.

99 However, in the context of the present proceedings, it is not for the President of the Court to assess the legality under Swedish law of any payments received by the applicants, or to establish whether they are compatible with Community law. In those circumstances, the ending of the payments at issue cannot be regarded as foreseeable with a sufficient degree of probability. It cannot therefore constitute a factor contributing to the financial damage being alleged.

100 The condition relating to urgency will be assessed in respect of each applicant in the light of the evidence concerning them that has been submitted to the President of the Court.

— Mr Yusuf's case

101 In their answer to the questions asked by the President of the Court, the Swedish authorities stated that the Stockholm (Spånga-Tensta) municipal authorities

decided on 12 February 2002 to deal with an application for social assistance, submitted by Mr Yusuf and his wife jointly under the socialtjänstlagen (Social Services Law), according to the normal procedure, even after the adoption of the contested regulations. Social assistance has been granted to them monthly since November 2001, taking the household's own resources into account; the amount of assistance for needs of the family that was paid in respect of March 2002 amounted to SEK 7 936. The social assistance payments have been made by postal orders which Mr Yusuf's wife has cashed at the post office.

102 In addition, the försäkringskassa (Social Security Office) has been regularly paying family allowances to Mr Yusuf's wife for their four children since 13 November 2001. The försäkringskassa continues to pay her such benefit at the rate of SEK 4 814 each month.

103 On the other hand, the payment of housing benefit which Mr Yusuf received until February 2002 has been frozen. The document from the försäkringskassa produced by the applicants at the hearing confirms that information.

104 In the light of the above considerations, it must be found that Mr Yusuf and his wife receive each month social assistance from the municipal authority and family allowances from the försäkringskassa to meet the needs of the family and that therefore this applicant is not in such an impecunious state that it would not be possible for him financially to wait for judgment to be given in the main proceedings without the operation of Regulation No 2199/2001 being suspended. The fact, alleged in the observations lodged by the applicants on 15 April 2002, that Mr Yusuf did not receive social assistance for the month of April 2002 results, according to information received, from an incorrect decision by the arbetsförmedlingen i Kista (Kista employment office) to remove him from the list of job seekers. This is therefore a chance occurrence and does not prevent Mr

Yusuf from submitting a fresh monthly application for social assistance, which he moreover intends to do once the error has been rectified.

105 However, it should be noted that if the incorrect decision of the arbetsförmedlingen i Kista is not revoked rapidly, as was still the situation when the applicants submitted their observations of 15 April 2002, and in the absence of any other form of assistance enabling the applicant to meet his day-to-day needs adequately until the Court's decision determining the main action, the judge in the interim relief proceedings may, under Article 108 of the Rules of Procedure, at any time vary or cancel the interim order on account of a change in circumstances (orders of the President of the Court of First Instance in Joined Cases T-7/93 R and T-9/93 R *Langnese-Iglo and Schöller* v *Commission* [1993] ECR II-131, paragraph 46, and in Joined Cases T-195/01 R and T-207/01 R *Government of Gibraltar* v *Commission* [2001] ECR II-3915, paragraph 116). It follows from that case-law that, by a 'change in circumstances', what are especially envisaged are factual circumstances capable of altering the assessment made in each particular case of the criterion of urgency.

— Mr Aden's case

106 As regards Mr Aden, it is clear from the answer given by the Swedish authorities that he did not submit an application for social assistance to the municipal authority of Stockholm in whose area he resides (Spånga) and did not therefore receive such benefit during the period in question.

107 The försäkringskassa has been regularly paying family allowances to Mr Aden's wife for their two children since 13 November 2001. The försäkringskassa continues to pay her that benefit in the sum of SEK 1 900 each month.

108 Lastly, Mr Aden has not been in receipt of a study grant from the Centrala studiestödsnämnden (the national authority responsible for awarding grants for higher education) since 20 January 2002.

109 Given those circumstances, it must be found that this applicant has not established that it was impossible for him to apply for social assistance to the municipal authority. As stated above (paragraph 101), Mr Yusuf's family, who live in the same district as Mr Aden, obtained and continue, as of right, to receive social assistance from the municipal authority. The Swedish authorities have, moreover, said that the Stockholm municipal authority would treat an application for social assistance submitted by Mr Aden or his wife in the same way as that made by Mr Yusuf. Thus, by not submitting an application for social assistance to the municipal authorities concerned, Mr Aden has acted in such a way as to place himself in a situation where he does not receive such benefit, despite the fact that it can be granted to him as the Swedish authorities have stated. Mr Aden has thus contributed to the damage on which he relies in order to establish the urgency of ordering the suspension sought (order in *Free Trade Foods* v *Commission*, cited above).

110 Finally, the fact remains that Mr Aden and his wife are in receipt of family allowances each month.

— Mr Ali's case

111 According to the answer from the Swedish authorities, Mr Ali has received no social assistance from the local authority of Järfälla where he and his family reside. The application which he made for social assistance on 13 December 2001 was rejected because the information supplied was incomplete. On 25 March 2002 Mr Ali's wife approached the local authority in order to submit a fresh application for social assistance. The Swedish authorities have also stated that,

according to the information provided by the Järfälla local authority, both Mr Ali and his wife are entitled to apply for social assistance to cover their basic needs. If such assistance were granted it would be paid into a bank account designated by the applicant, who may also ask for it to be paid by postal order.

112 Also, the försäkringskassa has been paying family allowances to Mr Ali's wife for their four children on a regular basis since 13 November 2001. The försäkringskassa continues to pay her that benefit, amounting to SEK 4 814 each month.

113 Payment of the housing benefit which Mr Ali was receiving up until February 2002 has, however, been frozen.

114 Given, first, the information provided by the Swedish authorities that both Mr Ali and his wife are entitled to apply to the Järfälla local authority for social assistance to cover their basic needs and the fact that steps have been taken in that regard and, second, the fact that family allowances are paid each month from which Mr Ali necessarily benefits indirectly, it has not been established that this applicant will be severely poverty-stricken in the immediate future. It should be added that there is every reason to believe that the Järfälla local authority, in view of the precedent set by the case of Mr Yusuf and his wife, to whom the Stockholm municipal authority granted social assistance notwithstanding Regulation No 2199/2001 and the Swedish law regarding certain international sanctions, will deal with the application for social assistance from Mr Ali under the procedure which normally applies.

115 However, if the application for social assistance remains unanswered, as was still the situation when the applicants submitted their observations of 15 April 2002, or is refused by the local authority concerned, and in the absence of any other form of assistance enabling the applicant to meet his day-to-day needs adequately until the Court's decision determining the main action, the judge in the interim relief proceedings may, under Article 108 of the Rules of Procedure, at any time vary or cancel the interim order on account of a change in circumstances (see paragraph 105 above).

Non-material damage

116 The non-material damage pleaded by the applicants comprises in essence the harm caused to their reputation, honour and dignity, and that caused to their families.

117 Although it cannot be ruled out that suspension of the operation of Regulation No 2199/2001 might remedy non-material damage of that nature, none the less such suspension could not do so any more than would annulment of that regulation in the future when the main action is decided (see, in respect of a decision to suspend an official from his duties, the order of the President of the Court of First Instance in Case T-211/98 R *Willeme* v *Commission* [1999] ECR-SC I-A-15 and II-57, paragraph 43, upheld on appeal by order of the President of the Court of Justice in Case C-65/99 P(R) *Willeme* v *Commission* [1999] ECR I-1857, and the order of the President of the Court of First Instance

in Case T-120/01 R *De Nicola* v *EIB* [2001] ECR-SC I-A-171 and II-783, paragraph 43). Since the purpose of proceedings for interim relief is not to make good damage but to safeguard the full effectiveness of the judgment on the substance, it must be concluded with regard to non-material damage that the condition relating to urgency is not met.

(b) Alleged damage to Al Barakaat International Foundation

118 This damage is stated to be constituted by the fact that it is impossible for Al Barakaat International Foundation to operate due to the application of Regulation No 2199/2001. Although it is not disputed that Al Barakaat International Foundation was forced to cease operations as a result of Regulation No 2199/2001, that damage cannot be regarded as serious since the association is non-profit-making. In addition, in so far as the applicants' line of argument should be understood to be that the damage is also constituted by the inability of third parties to use the system for the transfer of funds introduced by the association concerned, such damage would not be suffered by that applicant. Damage, if any, which the operation of the contested measure may cause to a party other than the party seeking the interim relief can be taken into consideration by the judge hearing the application for interim measures only when balancing the interests at stake (order of the President of the Court of First Instance in Case T-13/99 R *Pfizer Animal Health* v *Council* [1999] ECR II-1961, paragraph 136). The fact remains, however, that the interest of the third parties in question has not even been put forward as one of the interests to be balanced.

119 In view of all the foregoing, it must be concluded that the condition relating to urgency is not fulfilled, so that this application for interim relief must be dismissed without the need to consider the other conditions.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

**1. The application for interim relief is dismissed.**

**2. The costs are reserved.**

Luxembourg, 7 May 2002.

H. Jung

Registrar

B. Vesterdorf

President